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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 JOHN EDWARD ROACH,

14 Petitioner,

15 v.

16 STATE OF WASHINGTON,

17 Respondent.
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No. 09-5155FDB/JRC

ORDER TO SHOW CAUSE WHY THIS
PETITION SHOULD NOT BE
DISMISSED

20 The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C.
21 § 2254. This case has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.
22 §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrate Judges' Rules MJR 3 and MJR 4.
23 The matter is before the court for review of the petition prior to service.
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25 The court notes two defects in the petition. The court first notes that petitioner does not
26 appear to be in custody. Petitioner lists his residence as an address in Puyallup. Under 28

1 U.S.C. § 2254, the district court may entertain an application for a writ of habeas corpus only
2 from a person in custody pursuant to the judgment of a state court. The custody requirement of
3 the habeas corpus statute is designed to preserve the writ as a remedy for severe restraints on
4 individual liberty. Hensley v. Municipal Court, San Jose Milpitas Judicial District, 411 U.S.
5 345, 351 (1973). The person must be in custody pursuant to the conviction or sentence under
6 attack at the time the petition is filed. Maleng v. Cook, 490 U.S. 488, 490-91 (1989); Carafas v.
7 LaVallee, 391 U.S. 234, 238 (1968). A habeas petitioner is in custody if a previously expired
8 sentence has been used to enhance the length of a sentence of a later conviction. Maleng, 490
9 U.S. at 490. Federal courts have broadly construed the term “in custody” to include periods of
10 probation, parole, and supervised release. United States v. Spawr Optical Research, Inc., 864
11 F.2d 1467, 1470 (9th Cir. 1988), cert. denied, 493 U.S. 809 (1989); Dow v. Circuit Court of the
12 First Circuit, 995 F.2d 922, 923 (9th Cir. 1993), cert. denied, 510 U.S. 1110 (1994).

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15 The second defect in the petition is the fact that petitioner names the State of Washington
16 as the Respondent. 28 U.S.C. § 2243 indicates that writs are to be directed “to the person having
17 custody of the person detained.” This person typically is the superintendent of the facility in
18 which the petitioner is incarcerated. Failure to name the petitioner's custodian deprives federal
19 courts of personal jurisdiction. Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir.
20 1994). When a person is no longer in custody in the traditional sense of the word, but may be
21 subject to future custody due to the effects of the state conviction, the proper respondent is the
22 Attorney General of the state in which the judgment was entered. 28 U.S.C. § 2254, Rule 2
23 advisory committee’s note (b) (3).
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Petitioner is Ordered to Show Cause why this petition should not be dismissed prior to service based on these defects. A Response to the Order to Show Cause will be due on or before May 15, 2009.

The clerk is directed to send a copy of this order to petitioner and note the May 15, 2009 deadline on the court's calendar.

DATED this 17th day of April, 2009.

J. K. Matthews

J. Richard Creatura
United States Magistrate Judge